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Borders and the EU legitimacy problem: the 2015–16 European Refugee Crisis

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ABSTRACT

The porous external border around the Schengen member states of the European Union (EU) became a colossal political problem in 2015 and 2016 as the migrant and Refugee Crisis unfolded. In Beetham's seminal terminology, there was a crisis between the EU's power and legitimacy on all three dimensions hereof: The Dublin regime was not followed, there was a gap between the beliefs of the governing and the subordinate peoples, and there were increasingly critical views among citizens and politicians alike (even from mainstream parties) against the inflow of refugees and migrants outside of the normal asylum system. The behaviour of the EU actors since then can be interpreted as an attempt at containing this crisis as regards Beetham's legitimacy dimensions.

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1. Introduction

Hundreds of thousands of migrants and refugees entered the territory of the European Union (EU) in the two years of 2015 and 2016.¹ The development of the situation in the EU in this period was due to a simple relationship: The Schengen states had abolished the internal borders between them for the benefit of external borders, which had been more than porous. The existence (or not) of borders around the countries was suddenly again high politics. This can also be interpreted as an actualization of Carl Schmitt's criticism of the dominance of liberalism in modern politics to the extent that decision-makers did not acknowledge friend–enemy relationships as fundamental to any political system (Mouffe 1999); the lack of external borders was a sign of unrealistic and excessive liberalism.

The research question of this article is the following: What are the political legitimacy ramifications of the external shock of the 2015–16 migrant and Refugee Crisis for the EU, and what were the political responses to these legitimacy problems? There is a growing literature analysing and discussing the European migrant and Refugee Crisis (or Schengen Crisis) from a European integration theoretical angle (e.g. Börzel 2018; Börzel and Risse 2018; Schimmelfennig 2018) or through discourse analytical frameworks (e.g. Boukala and Dimitrakopoulou 2018). This piece distinguishes itself from this trend by applying a political theoretical to the migrant and Refugee Crisis with the political

legitimacy concept at its core. Contrary to the research contributions so far, I claim that the political theoretical approach makes the EU's continued inability understandable to respond effectively and in a co-ordinated manner to the crisis.

Migrants and refugees typically gained entry to Europe by paying human traffickers to sail them to an island in Europe or merely to put them in a boat off the shores of Africa, where another vessel could pick them up and save them. Smugglers typically made use of frail overcrowded boats, with limited fuel available to maximize their profits (Frontex 2015, 18). According to Interpol and Europol, most migrants and refugees paid the smugglers between €3000–6000 each (DR Nyheder 2016). In 2015 and 2016, there were two major routes to Europe: from Turkey to the Greek islands off the Turkish coast and from North Africa to the Italian islands of Lampedusa and Sicily. From Italy and Greece, the asylum seekers moved north to EU countries in northwest Europe, their aim largely being to reach countries such as Sweden, Germany, Denmark and the Netherlands. This was possible in 2015 and 2016 due to the inefficient registration of migrants and refugees in Greece and Italy in combination with the free movement between the Schengen states, all of the aforementioned northern EU countries being Schengen members.

The reception of the migrants and refugees in southern Europe was characterized in terms of a “wave good bye” position. If the incoming migrants and refugees had been registered in Italy and Greece, their cases would have been processed there. The casework should have been conducted with a view to reaching a decision on whether they were genuine refugees and personally persecuted, therefore having a right to protection with reference to the UN Refugee Convention or, alternatively, whether they should be characterized as non-pursued migrants and repatriated. Migrants and refugees alike might well have been presuming that it was easier to obtain a residence permit, welfare services and refugee status in the northern EU countries in one of the universalistic welfare states than in Greece and Italy (cf. Esping-Andersen 2013). As Frontex stated in their report from April 2015: “However, the vast majority of Syrians did not apply for asylum in the Member States of entry but rather in other Member States for many different reasons, notably because they expect to receive more attractive welfare benefits” (Frontex 2015, 18).

Nevertheless, the failure to register and process the cases in Greece and Italy reflects the fact that the two countries clearly broke the EU's Dublin Regulation (No. 604/2013), which determines that the EU countries that receive migrants and refugees first are also supposed to handle their cases (Wallace, Pollack, and Young 2015, 380). The two countries officially justified their behaviour with reference to the fact that they did not have the financial and administrative capacity to deal with the sudden influx of so many migrants and refugees in accordance with the Dublin regime.

2. Legitimacy

The clumsy treatment of the migrant and Refugee Crisis further reduced the EU's already somewhat wavering legitimacy in 2015 and 2016. These legitimacy problems are reflected in the Eurobarometer surveys. According to Eurobarometer, there was a sharp increase in Europeans that believe that “things are going in the wrong direction” in the EU between spring 2015 and autumn 2016 (from 35% to 56%, i.e. +21 percentage point) (Eurobarometer 2018, 65).

According to British political scientist Beetham (1991, 15–19), who analysed the relationship between power and legitimacy, exercising power in a legitimate manner means 1) that it is carried out in accordance with legislation (“rule of law”), 2) that there is a match between the beliefs of the dominant/governing and the subordinate/governed people, and 3) that the legitimacy is expressed in terms of the explicit support of the governing. Conversely, according to Beetham, power is illegitimate if there is no link between the beliefs of the governing and the subordinate people (he coined this a “legitimacy deficit”) and if the explicit support of the governing is withdrawn (“delegitimisation”). The analysis in this paper is based on this Beethamian framework.

This article argues that the EU’s wavering legitimacy resulting from the migrant and Refugee Crisis pointed out above using Beetham’s framework can be solved by accepting some of Carl Schmitt’s criticism regarding the effect of the hegemonic liberalism of which the Schengen agreement is an example (see below). Fundamentally, the absence of tough external border control is an expression of this fact. Carl Schmitt was a conservative German social theorist and strong critic of liberalism who is often acclaimed by the contemporary left wing and conservatives alike (Mouffe 1999).

According to Beetham’s framework, basically, the fact that the EU’s migrant and Refugee Crisis was not handled in accordance with the adopted legislation was undermining the legitimacy of the EU in 2015–16. This led to increased support for eurosceptical political parties throughout Europe (Börzel and Risse 2018, 99–101) even though it was mainly the “soft” kind of euroscepticism (Sørensen 2007). With Beetham’s concepts in mind, the migrant and Refugee Crisis thus triggered the progressive delegitimation of the EU for a period.

The 2015–16 migrant and Refugee Crisis threatened to delegitimize support for the EU’s Schengen cooperation. The starting point for the Schengen cooperation was a treaty on the free border crossings concluded by a small number of EU member states in 1985. This treaty was a spill-over from the Internal Market programme from the same year, which was intended to ensure a European Community (EC) (as it was then called) with “four freedoms”: the free mobility of goods, services, capital and persons. The Internal Market was designed to achieve a more financially viable liberalism with all of the benefits that it was expected to provide. The strategy was largely intended to depoliticize the market regulation in order to downgrade the conflicts affecting the market integration process. Hence, the decision-making was often effectively situated in various standardization and expert committees outside of the political system and democratic decision-making process (Nedergaard 1990). As always, however, depoliticization in the Schmittian optic risks leading to delegitimation due to the undermining of the fundamental features of the political system. This is the risk of “excessive liberalism” (Schmitt 2008), which could be the situation within the Schengen cooptation during the 2015–16 migrant and Refugee Crisis. Hence, it is of no surprise that the EU’s strategy of depoliticization through supranational delegation failed from the very beginning during the migrant and Refugee Crisis of 2015–16 (Börzel and Risse 2018, 84).

The Internal Market programme bore witness to a revitalization of the EU through market liberal initiatives after the EC had withstood a great crisis in the 1970s and up until the mid-1980s. Carl Schmitt’s criticism of such a strategy is basically that it compromises state sovereignty, which can prove fatal due to the fact that the state should always be considered hegemonic in relation to other social forms of practice if the legitimacy of

EU power is upheld (Schmitt 1985). In the event of “excessive liberalism”, the states lose their hegemonic roles. With such depoliticization stemming from parts of the Internal Market programme, there was a significant risk of the for-the-state-so-important friend/enemy relations disappearing and being replaced by technocratic initiatives concerning administration, technology and the economy (Schmitt 2003). Depoliticization potentially leads to delegitimization; as former President Jacques Delors once pointed out, the love felt for an internal market cannot compete with what one feels for one country.

Hence, depoliticization is not usually synonymous with reducing the level of conflict with the outside world. On the contrary, depoliticization often leads to the disappearance of the friend/enemy relation, which implies a high risk of conflict escalation, as the opponent now becomes almost the antithesis of a rational being and not “just” an enemy (Mouffe 1999). The opponent not only becomes a country’s enemy; the opponent becomes opposed to the basic rationale in the modern society’s device. Some of the EU’s external opponents in Syria, Russia, Libya, etc. may have been attributed this nature.

In the early negotiations on Schengen, agreement could not be reached on how the free movement of persons was to be established in practice. A limited group of like-minded member states therefore acted together on this outside of the established EU *acquis*. It was first with the Treaty of Amsterdam in 1997 that the Schengen cooperation became part of the EU project (as it was now called) (Thielemann and Armstrong 2014, 20–37).

“Schengen” is a small town in Luxembourg on the border with Germany and France. In June 1985, it was chosen as the location for a meeting between five EC countries: Belgium, the Netherlands, Luxembourg, France and West Germany. The city was a deliberate, symbolic choice for the negotiations on a treaty on movement between the five states. Originally, at the same time (and as a functional spill-over), they harmonized the control on the external borders due to the fact that these five countries were then completely dependent on the external border control being as effective as if it had been carried out on the national borders. This was a consequence of the fact that once a citizen had entered one Schengen country, they had open access to all of the other Schengen countries as well (Thielemann and Armstrong 2014, 20–37).

In principle, the EU’s Schengen cooperation was therefore given state-like features from the beginning so that it could protect the territory of the Schengen countries just like a state; however, it was this very feature that proved untenable as the circle of Schengen member states grew. From the original countries – which shared very similar organizational and legal constructs – Schengen came to include member states structured according to completely different legal structures and traditions for implementation. In Beetham’s terms, the current Schengen cooperation (with very different traditions pertaining to the rule of law) has shown itself to present serious challenges for the legitimacy of the cooperation. This is due to the fact that there is such a great difference between the participating countries regarding the beliefs among the governing and the subordinate people regarding compliance with statutory rules in the area. In other words, Carl Schmitt most likely would have criticized the Schengen cooperation to only in theory form the framework for the possession of a territory and thus a society’s specific order – a *Nomos* – without being in possession of the real state-like features, which are necessary if such a framework is to be able to function (Schmitt 2003).

Today, there are no fewer than 26 Schengen member states: Belgium, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, the Czech Republic, Germany, Hungary and Austria. Four of these countries are not EU members, but they are all closely linked to the EU's Internal Market. The Nordic countries all joined, for example, because they would like to maintain the Nordic Passport Union (founded in 1954). Bulgaria, Cyprus, Croatia, Liechtenstein and Romania are in line to be included in Schengen at some time in the future, but these countries have yet to meet the admission requirements (Thomas 1996, 15–32).

Many commentators postulate that the Internal Market requires the existence of the Schengen acquis, but the link is neither historical nor logical. Just as there are non-EU countries that are part of the Schengen acquis, EU membership does not necessarily require Schengen membership. The UK and Ireland are thus not members, even though they are (still) full members of the EU's Internal Market (Jensen and Nedergaard 2012). It also means that the Internal Market is not logically depending on the existence of the Schengen acquis. Should this part of EU cooperation break down as a result of a growing legitimacy deficit, the EU's Internal Market could potentially continue exactly as it did before Schengen. The Schengen acquis is likely to have facilitated the transport of goods to a significant extent across national borders in the Internal Market but it does not constitute the very foundation for this.

3. The porous external border

In connection with the 2015–16 migrant and Refugee Crisis, a number of Schengen member states reintroduced temporary border control on several occasions (e.g. Hungary, Slovenia, France, Germany, Sweden, Denmark, Norway, Austria and Poland). In May 2016, Germany, Denmark, Austria and Sweden requested the Commission that the temporary border control be extended for an additional two years. These requests were accepted, albeit six month at a time. The aim was both to limit the inflow of migrants and refugees and to prevent undesirable persons (e.g. potential terrorists) from gaining access to these countries. Sweden even introduced border control in a more stringent form via the so-called transportation liability in 2016, where for example railroad companies are held liable to pay compensation if they fail to examine travellers' identity papers. Austria also re-established their pre-Schengen controls on their Italian border. In any case, in legitimacy terms, the explicit support for the free movement within the Schengen acquis (i.e. the “excessive liberalism”) was pulled back in 2015 and 2016 (i.e. a delegitimation process in Beetham's terms). This was a sign of the Schengen member states increasingly seeking to re-establish their sovereign power over their respective territories and, consequently, returning state powers to the realm of the nation states.

The fundamental reason for this behaviour was that the control on the external borders of the Schengen countries had not been very effective in 2015–16. It was most often not as effective as the border control between the Schengen countries before the Schengen Agreement despite the adoption of EU regulations as far as the external borders are concerned. In other words, in concrete terms, the problems with the external border control were demonstrated at the border by the hundreds of thousands of incoming migrants and

refugees to Greece and Italy, while the path into Spain (after a few years) seemed to have become subject to normal working regulatory external border control.

The porous external border around the Schengen member states became a major political problem in 2015–16 as the migrant and Refugee Crisis unfolded. In Beetham's terminology, there was a crisis between power and legitimacy on all three dimensions hereof: The Dublin Regulation was not followed, there was a gap between the beliefs of the governing and the subordinate people, and EU citizens often viewed the inflow of refugees and migrants outside the normal asylum system very critically.

The reasons for the problems on the external borders were the following: If the external borders around Schengen countries were not checked, there is a risk of the countries with the weakest control providing an open door for anyone wanting to enter any one of the Schengen countries. Border control normally involves the clarification of the identities of incoming travellers: What are their purposes of entry? Are they wanted in international criminal registers and/or under suspicion for terrorism? Do they possess an authentic passport? Are visa requirements complied with? Are there signs of smuggling? According to many countries in the European north, these were among the details that Greece and Italy had completely forgotten to investigate in 2015 and 2016 during the migrant and Refugee Crisis. At the same time, these questions form the basis for normally operating controls on the border if, in the Schmittian optic, an authority is to ensure a region's territorial integrity, safety and production in the broadest sense of these words (Schmitt 2008).

In 2005, the EU established (at a rather late point in time compared to the adoption of the Schengen cooperation) Frontex, a collaborative venture concerning the external border controls, which is to assist the coordination of the cooperation between member states with a view to the management of the external borders. Frontex was renamed "EU Border and Coast Guard Agency" (EBCG) in 2016, but in spite of a larger budget, also the EBCG is without supranational competences and merely provides for measures to reinforce cooperation among the EU's member states (Schimmelfenning 2018, 981). However, the problems in this regard were the following in 2015–16 (Lehne 2016a, 2016b): 1) Frontex was far from powerful enough, 2) Frontex had insufficient EU funding, 3) the national authorities have not always been particularly cooperative regarding Frontex, and 4) there was a fatal "soft", laissez-faire approach overshadowing the entire EU for the entry of persons into Greece and Italy, contrary to what – according to Schmitt – should characterize a state-like feature like the Schengen cooperation.

The "soft" approach to the Schengen cooperation might also have been based on the widespread perception that the EU should be "normatively" very open in order to avoid anything similar to a nascent Fortress Europe. Thus, there was a certain legitimacy basis for the "soft" line, as long as there was no migrant and Refugee Crisis. In other words, in legitimacy terms, the "soft" line was a "fair weather" phenomenon (see Lehne 2016b), which could be in force for as long as the borders were not threatened in a Schmittian optic by the sudden influx of migrants and refugees.

During the 2015–16 migrant and Refugee Crisis, for a variety of reasons, the countries along the external borders in Southern Europe sought to free-ride. Had Greece and Italy maintained an effective external border, they (supported by EU funding and administrative assistance from EU countries) would have been responsible for handling all of the

asylum cases in question and the actual granting of asylum. They avoided this, however, by simply allowing the asylum seekers to continue north.

According to the Schengen rules, a country can at maximum reintroduce border control in a number of temporary stretches for up to six months, but several countries pressed the Commission in 2015 and 2016 to obtain extraordinary extensions. A number of Central and Eastern European countries along the so-called Balkan route from Greece to the northern European countries sealed their borders in 2016 via stringent guarding and fencing. A number of the Schengen member states reintroduced the temporary border controls in the form of random checks at the border (e.g. Denmark), in some cases with transportation liability (e.g. Sweden), and in other cases border control was introduced as from before the Schengen acquis, with the permanent control of all passports and travellers' identities (e.g. Austria) (Schmelfennig 2018, 980–981).

As mentioned above, according to the Schengen acquis, the reintroduction of border control since 2016 in many Schengen member states could only take place due to exceptional circumstances and on the basis of an application to the Commission. In 2016, the Commission declared that it took note of the fact that the countries had reintroduced the temporary border controls, but it also announced that these measures should be finalized by the end of 2017 (Kristeligt Dagblad 2017). In cases such as the Austrian control of its border with Italy and the Swedish transportation liability arrangement, the tough border control likely amounts to a violation of EU law. At the same time, these border control measures were in total correspondence with the beliefs of the subordinate peoples. Hence, according to one of the dimensions of Beetham's framework, the border controls increased the legitimacy of power. According to another one of Beetham's dimensions (rule of law), however, it reduced the legitimacy of the same power dimension due to the fact that it was sometimes a violation of the EU law.

4. No common preferences

For historical and other reasons, two of the northern Schengen member states were particularly welcoming vis-à-vis migrants and refugees during the migrant and Refugee Crisis: Sweden and Germany. Traditionally they have both had a liberal asylum regime (Schmelfennig 2018, 978). In Sweden, this was interpreted in the media as being due to a general "welcome culture" in a country that self-identifies as being morally superior – a "humanitarian superpower", which was obliged to receive people from the outside because it had both the resources and room for them (Washington Post 2015). According to Börzel and Risse (2018, 101), it was the mobilization of the "self/other" or "friend/enemy" (cf. Schmitt above) during the migrant and Refugee Crisis that was the reason why depoliticization through supranational delegation failed. Even in Germany where the "*Willkommenskultur*" (welcome culture) was understood to be based on the trauma that remains for being responsible for the genocide of six million European Jews and millions of other non-German nationalities during World War II, and where in the former East Germany, citizens still remembered the killings at border crossings of those who tried to flee to the West. Angela Merkel's initial "*Wir schaffen das*" came under pressure when the political parties, Alternative für Deutschland and CSU articulated a counter-discourse. Still, at the state level, Germany and Sweden have rather different preferences compared to other Northern European member states. In legitimacy terms,

according to Beetham's framework, the behaviour of Sweden and Germany served to stretch the legitimacy gap of the EU's power even further in other member states than Sweden and Germany.

The other EU countries were not outliers like Sweden and Germany, and most of the EU countries therefore preferred a different solution to the migrant and refugee issue than the one adopted by Sweden and Germany. It was difficult to get through with these wishes, however, as the German and Swedish openness created realities on the ground that the other countries – by virtue of Schengen – simply had to endure. In other words, the Swedish and German openness was forced on their neighbouring countries with different preferences due to the Schengen cooperation. In this way, the Swedish and German governmental lines favouring “excessive liberalism” – as far as the free movement of people was concerned – increased the EU's legitimacy deficit regarding Schengen because it magnified the difference between the beliefs of the dominant elite vis-à-vis the subordinate people. Hence, it contributed to increasing the EU's delegitimation.

As during the Eurozone crisis, Germany in particular was accused of acting from a position of supremacy and hegemony during the migrant and Refugee Crisis in relation to other European countries (Nedergaard and Snaith 2015). The German approach was claimed to be an expression of “moral imperialism”, as the country's behaviour only depended on what it found to be the right course without granting consideration to the wishes of other countries (Deutsche Welle 2015). The preferences of the peoples of the EU's member states during the migrant and Refugee Crisis was also a result of a spill-over from the Eurozone Crisis (Börzel and Risse 2018, 100–101).

The 2015–16 migrant and Refugee Crisis tested the ability of the EU to deal with a crisis. It became difficult, because the platform on which the decisions should be taken in this respect was too small as a result of Germany in reality deciding to set the pace for all of the other Schengen member states. Until a few years ago, the EU would have invested considerable efforts into major decisions being based on a broader platform of several countries without one country being the *de facto* leader (Bang, Jensen, and Nedergaard 2015). This is changing in these years as Germany has become the EU's *de facto* hegemon, and this change has repercussions for the legitimacy of the overall EU power (Nedergaard and Snaith 2015).

5. From idealism to realism?

The Commission sought to solve the 2015–16 migrant and Refugee Crisis by proposing a mandatory key for the distribution of migrants and refugees arriving in the EU between the other EU countries. This proposal came about not least because of pressure from Germany. Germany had a particular interest in this proposal, because it had received more than 1,000,000 migrants and refugees in the course of 2015 (Lehne 2016a). The EU heads of state and government had also accepted the distribution ratio in principle, but the implementation of it has failed to appear due to resistance from the subordinate people in the many EU member states. At the end of the day, many governments therefore decided for non-implementation (Börzel and Risse 2018, 90). In Beetham's optic, this can be interpreted as an attempt at reducing the legitimacy gap as far as the EU's power was concerned.

The resistance to accept the key for distribution was not least due to the fact that, at the same time, very little was done to shield the external borders. The legitimacy of the distribution key was therefore undermined by the inadequate external border controls. In some EU countries, the prevailing attitude appeared to be that the implementation of the key would have been like filling the leaky “Danaides Jar” as long as nothing was done to fix the external borders. In addition, there had also been (as mentioned above) different preferences between the countries as far as the extent to which migrants and refugees should be received.

The German hegemon reached an agreement with Turkey on behalf of the EU in March 2016 implying that the Turkish government would receive persons that had made it from Turkey to Greece but who had been rejected on account of not being refugees. Conversely, the EU committed to receive a corresponding number of refugees from Turkey. As part of the agreement, the EU allocated a significant financial assistance package to Turkey of 6 billion euros to help the country to provide temporary protection for Syrians, promised to consider to give Turkish citizens visa-free travel in due course for entry into the EU, and accepted an acceleration of the EU accession negotiations with Turkey (without being very specific on what this meant) (European Commission 2016).

The hope from the EU was that the agreement would effectively undermine the traffickers’ overall business model – inasmuch as they used Turkey as a starting point. Partly because non-refugees would be returned and partly due to the fact that Greece (even though it may not have been said so out loud) was not an attractive country in which to seek refugee status because it did not offer the same help while there as in the northwest European countries.

It is still debatable whether the new EU political line in 2016 was a shift in the direction of more realism in order to close (at least to some extent) the legitimacy gap of the EU that existed as pointed out using Beetham’s framework. Traditionally, the EU has been rather idealistic compared to, for example, the US and Australia as far as foreign relations are concerned. In dealing with other countries, the EU has traditionally placed emphasis on the use of “soft” instruments, such as political negotiations, persuasion and civil power, as well as a very broad interpretation of the concept of human rights – as opposed to the use of “hard” instruments in the form of lifting the authority through border police and ultimately support with military means. Former European Commission President José Manuel Barroso was known to support the idea of the EU as a soft power based on the idea of “Normative Europe” (cf. Manners 2002 concerning the content of the concept). In a 2009 speech, he stated that “it is often said that the EU’s comparative advantage lies in its normative power or the power of its values. I think this is right” (Barroso 2010). To a certain degree, it is possible to argue that the EU’s idealism should be based on the idea that one should do good for citizens on a global basis, while the focus in a realistic opinion would be on what ensures interests and the safety of a country’s own citizens.

In one sense, the migrant and Refugee Crisis – and the EU’s inability to handle it in 2015 and 2016 with the means at its disposal – was seen as evidence of the fact that the normative EU line had failed and had been delegitimized. The EU’s agreement with Turkey looked like a first sign of the recognition of the fact that the road would now go from idealism to realism regarding Schengen’s external borders. However, the “new” realism was far from straightforward realism, partly due to the fact that Turkey would now be handling the “hard” instruments for the security of the EU’s external borders.

Certain NGOs have also criticized the EU since 2016 for the break in the previous line and therefore refused to cooperate with the EU in Greece regarding the migrant and Refugee Crisis (Kingsley 2016). The EU-Turkey arrangement was partly based on a tit-for-tat arrangement involving (potentially) visa freedom for Turkish nationals and accelerated Turkish accession to the EU. These last parts would certainly increase the EU's legitimacy deficit due to the fact that it increased the distance between the beliefs among the governing and the subordinate people in the EU member states, as the EU citizens are not generally very positive vis-à-vis these initiatives and the consequences thereof.

However, the agreement with Turkey remained quite wobbly, as it included a long list of items that the EU, Greece and Turkey all had to live up to. Hence, there were many problems from the beginning. There were questions about whether the agreement would survive to the end of 2016. Even though the agreement would persist, it was only seen as a first step towards solving the migrant and Refugee Crisis and establishing well-functioning external border controls that should be as effective as the previous internal border controls were. The agreement with Turkey was insufficient to achieve this goal. In particular, a fundamental break with the fatal idea of a special European normativity in dealing with other countries has been required. This had not least to be materialized in the EU's relations with Libya, from where most of the influx of migrants and refugees into Italy came in 2016 after the Turkish route was closed. Nevertheless, there was a perception among commentators that without a shift from idealism to realism regarding the EU's foreign relations, the Schengen cooperation would break down due to the continuous Beethamian legitimacy gap as far as the EU's power was concerned (see Deutsche Welle 2015; Lehne 2016a, 2016b).

6. Conclusions

Well-functioning states require borders. Porous boundaries between countries undermine the rule of law, security and welfare systems, as the few countries offering these things are quickly overrun by people from countries that do not enjoy such good fortune. The countries offering such things would therefore have to abandon them sooner or later. Not that one can blame the droves of people who are willing to risk their lives to gain access to well-functioning welfare states where life seems so much better, even though the unintended consequence of their actions is the eradication of that which they are seeking.

This was the fundamental threat in Europe in 2015–16, which most Europeans were gradually beginning to realize. In this context, it was unfortunate and fortunate from an EU legitimacy point of view that Germany took the role to act as a European hegemon in this particular policy area. Germany had more understandable historical trauma and neuroses than other European countries with respect to reducing the EU's legitimacy gap. This meant that Germany had difficulties behaving as a realist actor on this issue.

Germany was forced to compensate due to its history and to push countries such as Denmark, the Netherlands, and Poland to act in a manner that was out of line with their preferences based on what their peoples find to be fair and right. The German unilateral leadership during the migrant and Refugee Crisis thereby increased a legitimacy deficit of the EU's power, which could have led to further delegitimation in 2015–16 of the EU's power if the countries with different preferences than Germany had not

been able to temporarily re-establish their national border control. Had permission not been granted to do so and if the “excessive liberalism” was not contained, it would probably have meant that the sovereign borders of the member states would have been restored to a situation as before the Schengen cooperation. Continuation of German “moral imperialism” would have resulted in the downfall of the Schengen cooperation.

At the same time, it was due to German hegemonic leadership through negotiations with Turkey on behalf of all EU member states that the so-called Balkan route was closed, which led to a de-escalation of the migrant and Refugee Crisis at the end of 2016. This was perhaps the first sign that realism is gradually taking over as far as the external borders of the EU is concerned.

European borders can be established on the EU’s external borders or between the member states. But in one of the locations there must be a tough regulatory control according to the argumentation of this article. Based on the experiences in 2015 and 2016, it is crucial that the EU develops a far more efficient external and “hard” border control. On the ideological level, there is a need for a change of the “The Normative Europe” idea if Schengen is to survive. Realism in dealing with countries outside the EU is the way forward. The alternative is clear: the permanent transfer of border control back to national states. The gradual delegitimization of the Schengen cooperation in 2015 and 2016 was close to triggering such a development.

Note

1. This article is a significantly extended and thoroughly revised version of an article entitled “Grænser og EU’s (manglende) legitimitet” in the Danish journal “Samfundsøkonomen”, No. 3: 33–38.” I appreciate the comments to an earlier version of the article by the reviewers of Policy Studies and by my colleague, Professor Anders Wivel.

Notes on contributor

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